

Office of the Chief Financial Officer**Notice of Final Rulemaking**

The Office of the Chief Financial Officer ("OCFO") hereby gives notice of the adoption on (date published in the D.C. Register) of amendments to Chapters 5 and 6 of Title 9 DCMR "Taxation and Assessments." These final rules are issued under the authority of section 937 of the Recorder of Deeds Act, approved March 2, 1962 (76 Stat. 16; D.C. Code § 45-937), D.C. Code §§ 47-916 and 47-920, District of Columbia Financial Responsibility and Management Assistance Act of 1995 (P.L. 104-8), approved April 17, 1995, and Mayor's Order 89-205, dated September 11, 1989. These final rules define, for the purposes of recordation and transfer taxes, the terms "nominal consideration" and "fair market value."

Notice of proposed Rulemaking was published on March 12, 1999 (46 DCR 2658). One comment was received concerning the calculation of "fair market value" of distressed property involved in foreclosures or bankruptcies. The reply was that the proposed rule permits the Recorder of Deeds, in his or her discretion, to consider the distressed value of the property under Sections 502.10 and 602.10.

This action provides procedures for the Recorder of Deeds to determine whether the consideration paid for real property is nominal where the consideration bears no reasonable resemblance to the fair market value of the property. This is necessary for the Recorder of Deeds to determine the proper amount of tax at the time of recordation. Under District law, recordation taxes are based on the consideration paid, and transfer taxes are based on the higher of the assessed value or sales price, unless no consideration is paid or the consideration paid is deemed to be nominal. If no consideration is paid or the consideration paid is deemed to be nominal, the recordation and transfer taxes are then based on the fair market value of the property. See D.C. Code §§ 45-924 and 47-904.

Currently, there are no regulations governing the basis upon which the Recorder of Deeds may deem consideration paid to be nominal. Under these final rules, the consideration paid shall be deemed nominal if it bears no reasonable resemblance to the fair market value of the property. The consideration paid will be deemed to bear no reasonable resemblance to the fair market value of the property if it is less than 30% of the fair market value of the property for which a deed has been submitted for recordation. The following formula will be applied to determine if the consideration paid is less than 30% of the fair market value:

$$\text{Fair market value of the property} \times .30$$

If the consideration paid is greater than or equal to 30% of the fair market value of the real property for which a deed is submitted for recordation, the consideration paid will not be deemed nominal. Where the consideration paid is not deemed to be